

All of the claims of the application stand rejected as obvious over Cherukuri et al. (U.S. Patent No. 5,009,893). Claims 14 and 18 stand rejected as obvious over Record et al. (U.S. Patent No. 5,372,824).

The Office Action states that Cherukuri et al. disclose the combination of a flavor (mint and cherry) and N-ethyl-P-menthane-3-carboximide in the amounts claimed for use in chewing gums and confections. The Office Action further states that the claims differ as to enhancement and the specific flavors. However, the Office Action concludes that it would have been obvious to one of ordinary skill in the art to use any flavor in Cherukuri et al. because the choice of flavor is seen to be no more than a matter of choice. The same reasoning is applied to the Record et al. reference. The rejections are hereby traversed and reconsideration is respectfully requested.

The basis of the rejections is that one of ordinary skill in the art could readily choose any flavor and combine it with N-ethyl-P-menthane-3-carboximide based on the teachings of the references. Applicants respectfully submit that this is not the case and particularly because the references teach against doing so.

Applicants would like to express their appreciation for the courtesies extended by the Examiner during the telephonic interview of July 14, 2005.

Cherukuri et al. teaches an edible composition such as a chewing gum having a unique, long-lasting, cooling perception which provides the user with a significantly enhanced perception of breath-freshening without bitterness (column 1, lines 7-13). The discovery of Cherukuri et al. is set forth at column 2, lines 34-37.

Applicants have unexpectedly found that N-substituted-P-menthane-carboximides when used in combination with menthol in specific amounts results in an unexpected heightened cooling sensation in edible products.

Of particular importance to the issues herein is the following sentence at column 2, lines 38-41.

The use of either of these products (i.e. menthol or N-substituted-P-menthane carboximides) alone or outside the disclosed ranges fail to result in the cooling effect achieved herein.

Thus, the reference is quite clear that the cooling agent (N-substituted-P-menthane carboximides) and menthol must be used together and the absence of the combination is a teaching in opposite to the fair disclosure of the Cherukuri et al. reference.

Applicants' invention is clearly a teaching against the combination of N-ethyl-P-menthane-3-carboximide and menthol. The claimed composition of the present invention does not include menthol because it does not include mint flavors in which menthol is a key ingredient.

With regard to Cherukuri et al., the Office Action states that at the time of the present invention it would have been obvious to use any flavor in the system of Cherukuri et al. because the choice of flavor is seen to be no more than a matter of choice and well within the skill of the art. This, however, is not what Cherukuri et al. teaches. The reference teaches the specific combination of mint flavor and the cooling agent. It is only by the combination that one of ordinary skill in the art is able to realize the benefits of the Cherukuri et al. teaching. This is emphasized in the reference at column 4, lines 3-18.

While the precise reason why these agents give an enhanced breath-freshening effect is not entirely understood, it is known that each component plays a vital role. The presence of only one of these components will not provide the desired results and as such are not considered part of this invention. Menthol, when used alone, has a high initial flavor impact, but its impact drops sharply within a few minutes after use. In addition, it tends to distort flavor notes

and render the product bitter when not used in precise amounts. In contrast N-substituted-P-menthanes carboximides disclosed in U.S. Patent No. 4,136,163 fail to exhibit any initial cooling perception.

A combination of these two ingredients when used in specific amounts overcomes the deficiencies of each component.

There is no more clear teaching in Cherukuri et al. that the combination of the cooling agent and menthol are required to achieve the desired results. Any departure from the specific combination is a teaching against what Cherukuri et al. fairly discloses.

In the telephonic interview, the Examiner referred to Table V and particularly Sample 3 of Cherukuri showing a confectionery composition containing cherry flavor and a cooling compound absent the presence of menthol. The Examiner is of the view that this disclosure is a disclosure of the present invention. Applicants' disagree.

As previously indicated, the entire specification including the claims of Cherukuri et al. require the combination of menthol and an N-substituted-P-methane carboxamide. Any edible composition which does not contain these two components is outside of the fair teaching of the reference.

Table V shows the preparation of four samples in which Samples 2 and 4 are within the disclosed invention (i.e. contain a cooling compound in combination with menthol) while Examples 1 and 3 are clearly comparative samples lacking menthol as a component. All of the samples set forth in Table V are directed to a confectionery composition containing a candy base.

Applicants' submit that there are two reasons why the comparative samples in Table V are not a disclosure of the claimed invention. First, the reference clearly teaches that these samples are of a comparative nature and not a disclosure of the subject matter of the reference. One of ordinary skill in the art would not look to the comparative samples as a teaching of what is fairly disclosed in the reference but would only look to samples that contain both menthol and a cooling agent. Second, the claims of the present application directed to a confectionery composition require that the enhanced flavoring agent (consisting essentially of one or more flavoring agents and the carboxamide) is present in an amount of about 0.10% to about 1.0% by weight of the confectionery composition. The comparative Sample 3 set forth in Table V of Cherukuri provides a flavoring agent (cherry flavor) which is present in an amount of 1.487% by weight of the confectionery composition which is far outside the maximum weight (about 1.0% by weight) of the enhanced flavoring composition employed in the present invention. When adding the weight of the cooling compound, the total weight of the flavoring agent and the cooling compound is even further from the maximum weight percent allowed in the present claims.

Accordingly, one of ordinary skill in the art could not be led to the claimed invention by a single comparative example in a reference. It is therefore submitted that the present claims clearly distinguish over Cherukuri et al.

The present invention is directed to the use of a particular cooling agent absent menthol (i.e. there are no mint flavors). Thus, the present invention has departed from the teaching of Cherukuri et al. Nothing in the prior art teaches or suggests that the particular carboxamide can be combined with non-mint flavors to obtain a desired effect. The present invention employs N-ethyl-P-menthane-3-carboximides not as a cooling agent but as a flavor potentiator. Applicants have discovered that the particular carboximide is a flavor potentiator because it enhances the systems flavor profile without imparting a characteristic flavor of its own. Nothing in Cherukuri et al. suggests this particular result because Cherukuri et al. viewed the cooling agent as enhancing the cooling effect of menthol. In the absence of menthol, the Cherukuri et al. disclosure provides no guidance to one of ordinary skill in the art.

Record et al. likewise concerns mint flavored agents. The approach by Record et al. is to remove some of the 1-menthol from mint flavors and then use N-ethyl-P-menthane-3-carboxamide to add cooling effect because of the loss of some menthol. Thus, the reference, like Cherukuri et al., teaches the combination of the cooling agent and menthol.

Record et al. shows that it was conventional to use the carboximide compounds as cooling agents in combination with menthol. What Applicants have discovered is a marked departure from the prior art. N-ethyl-P-menthane-3-carboximide can be used as a flavor potentiator for non-mint flavors. Nothing in the prior art teaches or suggests the surprising and unobvious result.

In view of the foregoing, Applicants submit that the present application is in condition for allowance and early passage to issue is therefore deemed proper and is respectfully requested.

It is believed that no fee is due in connection with this matter. However, if any fee is due, it should be charged to Deposit Account No. 23-0510.

Respectfully submitted,



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